IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22220 of 2003

Between:

D.Martin Suresh, s/o Sri D.Anthony,
r/o Marianna Vari Street, Kapadipalem, D.No.9/2003, Nellore.

..... PETITIONER

AND

1 The Commissioner and Director, School Education, Saifabad, Hyderabad.
2 The Regional Joint Director, School Education, Guntur.
3 The District Educational Officer, Nellore.
4 The Correspondent, St.Peter's High School, Nellore.

..RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the action of the respondents in not considering the case of the petitioner herein either for conversion of waterman post into Class IV Post or absorbing him in the post of Attender, which is lying vacant in the 4th respondent school, as illegal, arbitrary and unjust and direct the respondents to consider the case of petitioner for appointment in the post of Attender by issuing writ, order or direction.

Counsel for the Petitioner:MR.M.V.S.SURESH KUMAR

Counsel for the Respondent No.: GP FOR EDUCATION

The Court made the following :

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ORDER:

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1. This writ petition has been filed by the petitioner to issue a writ of mandamus to declare the action of the respondents in not considering the case of the petitioner either for conversion of waterman post into Class IV post or absorbing him in the post of Attender as illegal and arbitrary.

2. The petitioner was appointed as waterman on 31-8-1985. He has been working in the said post continuously with meager salary. The Government of A.P. issued G.O.Ms.No.237, dated 4-4-1985 prescribing guidelines for conversion of contingent staff to class IV staff. As per the conditions laid down in G.O.Ms.No.237 dated 4-4-1985, persons who have completed 10 years of service as on 1-4-1985 are eligible to be absorbed as Class IV staff against the said post. The petitioner completed more than 18 years of service in the 4th respondent school as waterman and he made several representations requesting the respondents to convert the post of waterman into Class IV post.

3. The learned counsel for the petitioner contends that the petitioner has been working for the last 20 years as waterman and considering his long service, the post of waterman may be converted into Class IV by absorbing the post. He placed reliance on an unreported judgment of this Court in W.P.No. 20470 of 1998 dated 4th August, 2000.

4. On the other hand, the learned Government Pleader appearing on behalf of the School Education-respondents No.1 to 3 contends that there is no sanctioned post and the petitioner was not subjected to any selection process before his appointment from the Competent Authority. Since, the internal arrangement was made between the petitioner and Respondents and when there is specific procedure

contemplated for selection of teaching and non-teaching staff, the said procedure was not followed. Hence, the Government Pleader prays to dismiss the writ petition.

5. Learned Standing Counsel appearing on behalf of respondent No.4 contends that there is no post of waterman in the school and the school is aided institution. The petitioner was appointed on temporary basis, and that does not give him any right to absorb or to convert the post into Class IV category. Therefore, there are no grounds to interfere and the writ petition deserves to be dismissed.

6. It is not in dispute before this Court that recruitment, selection and appointment of the staff of teaching and non-teaching in respect of aided school is governed by G.O.Ms. No. 1, dated 1.1.1994. Before recruitment of any person, permission from the competent authority has to be taken. It is not in dispute that the management cannot create any post of its own. It is for the Government to create the posts in aided institution. Admittedly, the post of waterman was not created by the Government. So also no procedure contemplated under G.O.Ms.No.1, dated 1-1-1994 is followed. However, the learned counsel for the petitioner placed reliance on an unreported judgment in W.P.No. 20470 of 1998 dated 4th August, 2000 wherein it was held;

> *"Writ Petition is disposed of with a direction to the respondents that the respondents shall issue necessary orders absorbing the petitioner into Class-IV post with effect from the date on which he has completed ten years of service and sanction the grant-in-aid for the purpose of payment of salary as Class-IV employee."*

7. The claim of the petitioner therein is based on G.O.Ms.No.237, dated 4.4.1985 the relevant paragraphs in G.O.Ms.No.237 and 4.4.1985 reads as follows:

> *"After careful consideration Govt. have decided to extent the aforesaid facility to the contingent staff in private aided Schools. Accordingly they direct that the posts of waterman, watchman, sweeper, scavenger, gardener-cum-sweeper, in private aided schools, be converted into class IV posts in the scale of Rs. 290-425 with effect from 1-4-1985 subject to the following conditions that:*
>
> 1. *The posts have been created under the orders of competent authority.*

2. *They are full time.*

3. *They are in receipt of aid, and that*

4. *They have been in existence for a period of not less than 10 years as on 1-4-1985"*

8. None of the conditions of the said G.O. had been fulfilled. Because the petitioner miserably failed to file any documents to show that the waterman post was created by the Competent Authority and it is a full time and the said post was in existence not less than 10 years as on 1-4-1985. However, the petitioner is working in the post for a long time is not a ground for converting the same into Class IV category.

9. The learned Government Pleader for Higher Education relied on a decision in ***A. Uma Rani Vs. Registrar, Co-operative Societies :***

> "*it is equally well settled that those who come by back door should go through that door."*

10. In this case the petitioner was not selected on a regular basis by duly selection committee and the post was not created by the competent authority. The petitioner came by back door method and has to go by back door.

11. Hence, this writ petition is devoid of merit and accordingly dismissed. No order as to costs.

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K.C.Bhanu, J.

29th June, 2005.

KM

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Commissioner and Director, School Education, Saifabad, Hyderabad.
2 The Regional Joint Director, School Education, Guntur.
3 The District Educational Officer, Nellore.
4 The Correspondent, St.Peter's High School, Nellore.

5. 2 CCs to G.P. for Education, High Court Buildings, Hyderabad (OUT)

6. 2 CD copies

7. 1 CC to MR.SURESH KUMAR

THE HON'BLE MR JUSTICE K.C. BHANU

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29th June, 2005.